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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,
vs.

JOSEPH DAVID RPBERT6SON,
Defendant.

CR 15-07-H-DWM

DEFENSE INVESTIGATOR'S
DECLARATION RELATED TO
SURVEY ISSUES AND POND
LOCATIONS

DECLARATION UNDER 28 U.S.C. §1746

COMES NOW the undersigned defense investigator, Gary Hopkins, and under
penalty of perjury states:

- (1) That I am an investigator with the Federal Defenders Office;
- (2) In reviewing the draft presentence report with Joe Robertson, he indicated that the actual boundary line between the Manhattan patented

mining claim and the Mohawk unpatented mining claim differed from what was shown at trial. Government Exhibit 42, for instance, shows ponds #1 through #6 on the unpatented Mohawk mining claim which is National Forest Service land, and ponds #7 through #9 on Mr. Robertson's patented Manhattan mining claim.

- (3) Janet Kempff is the now-retired National Forest Service surveyor who located the actual boundaries of Mr. Robertson's properties in 2010 and 2011. I conducted a site visit in June 2016 and was able to find the clearly marked corner marker and boundary markers (red posts and red paint on trees) between the Mohawk and Manhattan mining claims. By walking the boundary line between the ponds, it became apparent that only ponds #1 through #3 are on the unpatented Mohawk mining claim. Ponds #4 though #9 are on Mr. Robertson's patented Manhattan mining claim. Ponds #1, #2, and #3 are the puddled water on either side of the culvert in Mr. Robertson's driveway and the most northern test pit.
- (4) On 06/13/2016 I contacted Marty Vanausbol, Lead Survey Tech for the "Eastside Land Zone" of the National Forest Service in Bozeman. I asked Mr. Vanausbol for information regarding a survey conducted by Janet Kempff (now retired) on Joe Robertson's property. Mr. Vanausbol got back to me after doing some research and advised that he had spoken with Jackie Fisher who said that according to Bryan Whittaker, we would need to request those records from his office. Mr. Vanausbol further advised that according to Ms. Kempff's log she conducted a survey of the area in question on 09/16/10 and completed her work on 05/24/11. Mr. Vanausbol has a diagram showing where Ms. Kempff placed the corner markers.
- (5) Following my discussions with Marty Vanausbol I placed a call to Bryan Whittaker. Mr. Whittaker advised that he would find out whether the document produced by Ms. Kempff is a public record. He said that if it is a public record he will have the forest service send it to me. Mr. Whittaker said that if the document in question is not a public record, he will "look at it and decide if it is discoverable." As of this writing I am still waiting to find out the status of the documentation in question.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 11th day of July, 2016.



GARY HOPKINS
Investigator

**CERTIFICATE OF SERVICE
L.R. 5.2(b)**

I hereby certify that on July 11, 2016, a copy of the foregoing document was served on the following persons by the following means:

1 CM-ECF

 Mail

1. CLERK, UNITED STATES DISTRICT COURT

1. Bryan R. Whittaker
Assistant U.S. Attorney
U.S. Attorney's Office
901 Front Street, Suite 1100
Helena, MT 59626
Counsel for the United States of America

/s/ Michael Donahoe
MICHAEL DONAHOE
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